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July 11, 1996

**BY HAND-DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Stop Code 1170  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: **In the Matter of Streamlining Broadcast  
EEO Rule and Policies  
MM Docket No. 96-16**

Dear Mr. Caton:

Transmitted herewith by facsimile pursuant to Section 1.52 of the Commission's Rules are ten (10) copies of the Joint Comments of the North Carolina and Virginia Associations of Broadcasters in MM Docket No. 96-16.

If any questions should arise in connection with your consideration of this matter, please contact this office.

Sincerely,

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

Mark J. Prick

Counsel to The North Carolina and  
Virginia Associations of Broadcasters

Enclosures

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
Streamlining Broadcast EEO )  
Rule and Policies, Vacating the EEO )  
Forfeiture Policy Statement )  
and Amending Section 1.80 of )  
the Commission's Rules to Include )  
EEO Forfeiture Guidelines )

MM Docket No. 96-16

To: The Commission

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**JOINT COMMENTS OF THE  
NORTH CAROLINA AND VIRGINIA  
ASSOCIATIONS OF BROADCASTERS**

July 11, 1996

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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EEO Forfeiture Guidelines	)	

To: The Commission

**JOINT COMMENTS OF THE  
NORTH CAROLINA AND VIRGINIA  
ASSOCIATIONS OF BROADCASTERS**

The North Carolina Association of Broadcasters ("NCAB") and the Virginia Association of Broadcasters ("VAB") (collectively, "the Associations"), by and through their undersigned counsel and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, respectfully submit the following comments in response to the Commission's Order and Notice of Proposed Rule Making (the "NPRM"), 11 FCC Rcd 5154 (1996)<sup>1</sup> in the above-referenced docket.

**I. INTRODUCTION**

NCAB is a voluntary trade association consisting of some 24 television and 131 radio broadcast stations in North Carolina. VAB is a voluntary trade association consisting of some 22 television and 104 radio stations in Virginia. These comments are filed jointly in response to the Commission's Order and Notice Proposed Rule Making released on February 16, 1996 seeking

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<sup>1</sup> These Joint Comments are timely filed pursuant to the Commission's Order, released June 26, 1996, DA 96-1033, establishing July 11, 1996 as the new filing deadline for comments.

comment on several proposed revisions to the FCC's EEO rule and policies (collectively, "the EEO rule").<sup>2</sup> The Associations respectfully submit these comments in order to support the Commission's reform proposals and to suggest specific revisions to the EEO rule that are appropriate in light of the experiences of North Carolina and Virginia broadcasters.

It should be emphasized at the outset that the Associations and their constituent members are committed to equal opportunity principles and to the historic purposes of the EEO rule. Minorities and women have served, and continue to serve, with distinction on the Board of Directors of the Associations. In furtherance of their commitment to EEO, the Associations work closely with their members to enhance the broadcast employment opportunities of minorities and women. For example, the Associations maintain a job bank of broadcast employment opportunities which they disseminate to interested minorities and women at job fairs and upon individual request. The Associations have also sponsored PSAs to encourage minority participation in the broadcast industry. In addition, the Associations routinely send out newsletters and legal bulletins which address EEO issues and sponsor workshops on EEO matters at annual conventions and other meetings.

Nonetheless, the Associations believe that the present EEO rule, while laudable in its intent, has become bogged down by procedural and record keeping requirements which elevate form over substance and which ignore practical, real world efforts to better the lives of individuals through

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<sup>2</sup> These comments are directed at modifications which the Associations believe should apply equally to all television and radio broadcasters. The Associations, however, acknowledge that Congress has limited the Commission's discretion to alter its EEO rule, as it existed on September 1, 1992, with respect to television broadcasters. See Section 22(f) of the 1992 Cable Act, 47 U.S.C. § 334. Accordingly, the Associations' recommendations focus on radio broadcasters.

training and internships. It is the experience of the Associations' members that the rule has led to dislocations in recruiting efforts which may be detrimental to the overall goal of encouraging minority participation in the broadcast industry and which result in overly burdensome administrative and record keeping requirements. The administrative and record keeping burden on smaller broadcasters is especially onerous and bears no relation to actual discriminatory conduct by a particular station. In fact, the effect of the EEO's procedural requirements is that the more effort a station puts into complying with the rule, the more the station is mired in a quagmire of paperwork.

To address these concerns, the Associations propose that the EEO rule be amended to allow significantly expanded safe harbors for broadcasters. Specifically, the Associations believe that broadcasters should qualify for an exemption from the EEO reporting and record keeping requirements if: (1) they employ twenty-five (25) or fewer full-time employees; (2) they are licensed to communities which have an available labor force which is less than 10% minority; (3) they participate in qualified job fairs or on-campus recruiting activities; or (4) they participate in qualified internship or training programs. Additionally, the Associations believe that the record keeping requirements with respect to female applicants and employees should be eliminated for all stations.

## **II. THE EXPERIENCE OF SMALLER BROADCAST STATIONS IN COMPLYING WITH THE CURRENT EEO RULE**

The specific proposals of NCAB and VAB must be viewed light of the recent experience of its members in complying with the requirements of the FCC's EEO rule. The recent experience of

smaller<sup>3</sup> broadcast stations shows that the FCC's EEO rule, as it is currently enforced, creates harmful distortions in the hiring process by imposing enormous administrative and record keeping burdens which bear no relation to the broadcaster's individual EEO program. Moreover, the FCC's emphasis on "getting the right numbers" has dehumanized the hiring process and may have made it harder, not easier, to attract qualified minority applicants to available broadcast positions.

A. The Current Record Keeping Requirements Are Overly Burdensome

Smaller broadcasters spend an ever increasing amount of time, effort and resources in complying with the administrative and record keeping requirements of the FCC's EEO rule. The FCC in recent years has repeatedly levied substantial forfeitures on broadcasters for failure to generate and maintain sufficient EEO records. As the EEO rule is currently enforced, broadcasters must maintain, at a minimum, the following information:

- (1) a list of all referral sources utilized for each opening;
- (2) the numbers of referrals (broken down by race and sex) received from each referral source;
- (3) the number of applicants (broken down by referral source, sex and race) for each job opening;
- (4) the number of interviewees (broken down by referral source, sex and race) for each job opening; and
- (5) the name, race and sex of each new hire or promotion. This information must be kept for entire license term. In the event that the Commission elects to authorize eight-year license terms in its pending rule making proceeding to implement the broadcast provisions of the Telecommunications Act of 1996, this burden will only increase.

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<sup>3</sup> For purposes of these comments, "smaller" broadcast stations shall refer to broadcast stations which employ twenty-five (25) or fewer full-time employees.

Moreover, in the event that a license challenge is mounted, broadcasters must be able to explain why a particular hiring and interview decision was made some five to eight years ago! Thus, broadcasters must make and keep notes reflecting all contacts with job applicants and interviewees. In short, broadcasters are well-advised to maintain each and every piece of paper generated for the entire license term in connection with a station's hiring and firing decisions.

A tremendous amount of time and effort is needed in order to generate and maintain the required information. In particular, enormous resources are expended by smaller broadcasters in compiling the necessary information and producing the required records. Of course, the harsh irony of the Commission's procedural requirements is that the amount of resources which have to be expended on unproductive procedural matters rises in direct proportion to the vitality of the station's EEO program.

The resources which small broadcasters must expend in attending to such paperwork matters is wholly out of proportion to the benefits to be derived from them. In particular, in the present era of multiple radio station ownership, this drain on the resources of smaller broadcasters is particularly acute. Smaller broadcasters are now forced to compete with the greater financial and manpower resources of "super duopoly" broadcast stations. The drain on resources caused by the current EEO rule further hampers the ability of smaller broadcasters to fairly compete with the larger station operations and, in the end, to serve the public.

**B. Excessive Focus on Paperwork and "Getting the Right Numbers"  
Creates Hiring Distortions and Inefficiencies**

It is the experience of many of the Associations' members that the recruitment process to fill a job opening now takes considerably longer than it did prior to the FCC's emphasis on EEO

"efforts." The implementation of an approach to EEO which emphasizes procedure and record keeping has created an orthodox hiring procedure which all broadcasters are required to follow. As a result, it now takes many member stations twice the amount of time to get from the point of a job opening to a job hire than it did before the efforts based procedural requirements were fully articulated.

This cookie cutter regulatory approach—while correct in its attempt to focus on actual recruitment efforts rather than quotas—is not consistent with the manner in which hiring decisions are made in the real world. Oftentimes, hiring decisions are made under pressure to fill an opening by a certain time or within a certain budget. For example, if an on-air radio personality quits on short notice to his or her employer, the broadcaster must replace that employee as quickly as possible. Under these circumstances, it may not be possible to follow the Commission's "orthodox" hiring procedures, which include sending out notices to all recruiting sources, placing ads in the newspaper and bringing finalists in for interviews.<sup>4</sup>

Moreover, the fact that licensees are required by the FCC to have a certain number of minority and female applicants in their applicant pools is becoming well-known. The Associations' members increasingly are hearing comments from potential minority applicants to the effect that they do not want to apply for a job just so the station can have "better numbers." Recruits are wondering, somewhat cynically, but perhaps in some cases accurately, if they are being courted just to make the numbers come out right. Whether this perception has basis or not with respect to a particular

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<sup>4</sup> This does not mean, of course, that minorities and women are excluded from consideration. Most stations employ minorities and women and post openings to obtain input from their employees. So it is no longer true that there is an exclusive "old boy" network. The new "network" includes women and minorities.



employer, this perception on the part of potential applicants pollutes the entire process. Forcing employers to focus on developing statistical data to ensure the "right number" with respect to every job opening belittles all potential candidates and makes the entire selection process suspect. It is the experience of many of the Association's members that this is hurting rather than helping broadcasters' efforts to attract minority candidates to available broadcast positions.

### **III. THE ASSOCIATIONS' PROPOSALS FOR MODIFICATION OF THE EEO RULE**

The Associations support the premise of the FCC's NPRM, which is that substantial relaxation of the administrative and record keeping requirements of the EEO rule is appropriate. In particular, the experiences of smaller broadcasters show that the current record keeping requirements are wholly out of proportion to the benefits derived therefrom. The Associations recommend that the Commission greatly reduce the categories of stations which are subject to the record keeping requirements and authorize the use of job fairs or training and internship programs in lieu of the current record keeping requirements.

The Associations' specific recommendations are as follows:

#### **A. Exemption from EEO Reporting and Record Keeping Requirements Should Be Extended to a Broader Class of Broadcast Stations**

In light of the experiences of its members in complying with the current EEO reporting and record-keeping requirements discussed above, NCAB and VAB advocate extending relief from the EEO reporting and record keeping requirements to all broadcast stations with twenty-five (25) or fewer full-time employees.

Practical experience has revealed that the current record keeping requirement is too burdensome for smaller broadcast stations. The current exemption for stations with staff sizes of less than five full-time employees is so restrictive as to be nonsensical. Smaller stations have fewer hiring opportunities, and limited financial, personnel and time resources available for administrative and record keeping requirements.

The FCC's current record keeping requirements are particularly in need of revision in light of the rapidly changing ownership structure of the broadcast industry. With the elimination of national ownership limits and the relaxation of local ownership limits brought on by the Telecommunications Act of 1996, multiple station ownership in individual markets is now the industry norm.<sup>5</sup>

In light of these industry changes, stations which have twenty-five or fewer full time employees (including employees of commonly-owned stations in the same market) are now considered "small" stations. To reflect these changes, adoption of a twenty-five employee or less exemption standard would free smaller broadcasters from the administrative and record keeping burdens of the current EEO rule.

**B. The Commission Should Expand the Labor Force Threshold and  
Should Permit the Use of Alternative Labor Force Measurements**

It has been the experience of many of the Associations' members that smaller broadcasters located in MSAs may not actually recruit successfully from the entire MSA. For this reason, the

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<sup>5</sup> The Associations note that FCC Forms 395, 396A, and 396 should be revised to account for industry changes. These forms should allow commonly owned and operated stations to report all employees on the same form.

FCC's current focus on MSA labor force data mischaracterizes the effective labor pool for many stations.

Currently, the FCC evaluates requests to use non-MSA labor force data using a three-part test which evaluates the following elements: (1) the distance of the station from the areas with significant minority population; (2) the difficulty in commuting from those areas to the station; and (3) the effectiveness of previous recruitment efforts directed at MSA minority labor force.<sup>6</sup> Because under the current approach stations must satisfy each element of this test, the result has been that it is almost impossible for a broadcaster to utilize alternative labor force data.

The Associations believe that the Commission should allow a station which satisfies any one of the current three criteria to use alternative labor force data. The use of alternative data will allow broadcasters to be evaluated in their EEO efforts based on data which more accurately reflects the actual labor force from which they can realistically attract minority candidates.

In addition, the Associations believe that the five percent threshold for minority population in the available labor force should be increased to ten percent. Under this approach, only stations which have an available minority labor force of ten percent would be subject to the EEO record keeping requirements. The Associations believe that ten percent is a threshold level which ensures the practical availability of a minority labor force at a level which should subject broadcasters to the current EEO record keeping and reporting requirements. Combined with the relaxation of the alternative labor force standard discussed above, adjustment of the available minority labor force threshold will ensure that only those broadcasters in areas with substantial numbers of minorities in

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<sup>6</sup> NPRM at ¶ 35.

the available labor force are forced to comply with the current record keeping and reporting requirements.

**C. Exemption From the Reporting and Record Keeping Requirements Should Be Granted to Stations Which Establish Internship and Training Programs or Participate in State or Nationally Approved Job Fairs**

While the previous points have dealt solely with smaller stations, the Associations also believe that all broadcasters, regardless of size, should benefit from exemption from the EEO reporting and record keeping requirements if they participate in qualified job fairs or internship and training programs. Such programs, unlike paperwork rules, may actually help real people who are interested in broadcasting as a career. Accordingly, the Associations propose that the Commission allow exemptions from current reporting and record keeping requirements for stations which implement approved internship and training programs which are geared towards minorities and women.

It is the experience of many of the Associations' members that a substantial impediment to hiring minorities to broadcast positions is lack of training. Accordingly, one proper focus of EEO efforts should be on training and career development of minorities. If broadcasters are willing to develop and implement such programs, they should benefit from such efforts by an exemption from existing record keeping and reporting requirements.

Qualified internship or training programs should consist of the following elements:

- (1) A systematic program geared towards the professional development of participants in the broadcast industry which teaches participants basic skills necessary for broadcast positions and emphasis hands-on experience and training, under the supervision of trained employees; and
- (2) The program must last for a least one school semester.

Recognition of such programs will lead to the implementation of new and innovative programs and will result in tangible, real world benefits for participants.

**D. All Broadcasters Should Be Exempted From Reporting Requirements With Respect to Females**

The Associations propose that women should be exempted as a class entirely with respect to the current reporting and record keeping requirements. Women typically represent about one-half of every available labor market. There are sufficient remedies outside of FCC rules for discrimination against women. It is the experience of many of the Associations' members that women have made great strides in the broadcast industry, in all sizes of broadcast markets. Circumstances have changed such that women, as a group, are no longer disadvantaged with respect to broadcast industry employment. As a result the FCC's EEO rule should be modified to keep pace with such changes.

**E. Scope of the Proposed Exemption**

Stations which benefit from the exceptions described above should only be required to file the first page of Form 395-B and Form 396-A, and the first two pages of Form 396, certifying that they qualify for an exemption. The qualifying stations would otherwise be exempt for EEO reporting and record keeping requirements, just like stations, under the current rule, with less than five employees.

The extension of relief to this class of stations will not have a detrimental effect on the EEO requirement itself. All broadcast stations will still be required to comply with Title VII of the Civil Rights Act of 1964. In addition, they would still be required to (1) maintain an EEO program; (2) disseminate that program to job applicants and existing employees; (3) use minority organizations,

media, educational institutions and other potential sources of minority and female applicants when they are fruitful and as often as practically possible; (4) evaluate employment profile and job turnover against the availability of minority employees in the stations' recruitment area; and (5) offer promotions of qualified minorities in a nondiscriminatory fashion.

In the event of a challenge on EEO grounds of a qualifying station's license renewal application, the licensee will still have the opportunity to defend itself by providing a narrative description of its recruitment efforts and supplying whatever supporting data and information they elect to maintain. Under this approach, the Commission would be prohibited from taking adverse action against an exempt licensee because of a lack of EEO records. The Commission could, however, require the licensee to keep such records on a case by case basis if the licensee's showing in response to an EEO challenge was not adequate.

#### IV. THE PROPOSED FORFEITURE POLICY SHOULD BE REJECTED

##### A. The Policy Will Exacerbate Undue Emphasis on "Getting the Numbers Right"

In its 1987 revisions to its EEO rules, the U.S. Department of Justice and the Anti-Defamation League of B'nai B'rith proposed adding a statement that no broadcaster shall be determined to have violated the EEO requirements on the basis of its failure to attain any specified statistical measure.<sup>7</sup> The FCC rejected this recommendation, stating that its guidelines should not be interpreted as quotas. Nonetheless, the FCC's newly proposed forfeiture guidelines provide that a \$12,500 forfeiture shall be assessed against a licensee which fails to attract adequate numbers of

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<sup>7</sup> See In re Amendment of Broadcast EEO Rules, 63 Rad.Reg. 2d (P&F) 220 (1987).

minority and female applicants or hires "for at least 66% of all vacancies during the license term."

The valuation of a forfeiture by a precise numerical measure creates a de facto quota requirement.

If these guidelines are adopted, every licensee will judge the success of its EEO program by reference to the FCC's numeric guidelines. Such a result is contrary to the FCC's repeated statements that its policies should not be interpreted as quotas.

The proposed forfeiture policy will exacerbate the worst features of the current FCC EEO rule. It will put even more emphasis on "getting the right numbers" in referral, applicant and interview pools, without consideration of real-life factors such as the qualifications of the candidate, the need to fill a position rapidly, and resource constraints on small and medium sized broadcasters.

**B. The Proposed Policy Is Unacceptably Vague**

Under the proposed policy, a base forfeiture of \$12,500 will be imposed for "[f]ailure to recruit for at least 66% of all vacancies during the period under review so as to attract an adequate pool of minority and female applicants."<sup>8</sup> It appears that the proposed base forfeiture is premised on two findings: (1) that the licensee failed to recruit for at least 66% of all vacancies, and (2) that the licensee did not attract an "adequate" pool of minority and female applicants. This language is unacceptably vague and is insufficient to give reasonable broadcasters notice of what conduct will lead to the imposition of a penalty.

First, it is unclear whether a base forfeiture requires both a failure to recruit for 66% of all vacancies and a failure to attract an "adequate" pool of minority and female applicants. It may be that a licensee recruits for 100% of all vacancies but nonetheless fails to obtain an "adequate" pool

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<sup>8</sup> NPRM ¶ 39.

of minority and female applicants. Conversely, it may be the case but a licensee fails to "recruit" for any vacancies but nonetheless obtains an "adequate" pool of applicants. In either instance, it is impossible to know whether a forfeiture will be imposed.

Likewise, the term "adequate pool" is left undefined. It is impossible to know whether this refers to all pools taken together or whether a single instance of failure to attract an "adequate pool" will subject a station to a fine. Without a definition, again, broadcasters have no way of knowing whether or not they may be subject to a \$12,500 fine. This is particularly unacceptable if it is the case that a single failure to obtain an "adequate pool" is a violation of the policy.

In addition, the proposed policy indicates that evidence of a violation subject to a \$12,500 forfeiture includes inadequate record keeping and/or inadequate self-assessment. Again, the policy is unclear whether these are, in fact, separate and independent grounds for the imposition of a \$12,500 fine or whether they are simply evidence of a separate violation.

These definitional uncertainties point to larger problems created by the proposed policy. As proposed, the forfeiture policy is unacceptably vague. If the policy was modified to provide more specific (and workable) standards, however, the policy would amount to an unconstitutional quota.



V. **THE FCC'S AFFIRMATIVE ACTION POLICY MUST BE REVIEWED  
FOR CONSTITUTIONALITY IN LIGHT OF THE SUPREME COURT'S  
DECISION IN ADARAND**

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NCAB and VAB respectfully do not agree with the Commission's conclusion that the Supreme Court's decision in Adarand has no application to the FCC's EEO program.<sup>9</sup> The current embodiment of the FCC's EEO rule is much more than an "efforts based" program. The rule, in its enforcement, contains explicit hiring and recruitment targets which are, in fact, race-based.

There can be no question that the FCC's current enforcement of its EEO rules is preoccupied with an evaluation of compliance with numeric standards. For example, in a 1994 renewal case involving a petition to deny based on alleged EEO violations [Golden Empire Broadcasting Company, 9 FCC Rcd 6110 (1992)], the FCC imposed sanctions on the licensee, despite finding that the licensee had "consistently recruited, interviewed and hired minorities," because the licensee did not hire a Hispanic among its 17 hires and had "failed to modify its recruitment efforts to attract qualified Hispanic applicants." The FCC imposed sanctions without any finding or consideration of the qualifications of the minorities which were rejected by the licensee. Indeed such a consideration would appear too subjective for the FCC's consideration. The result is that the FCC must focus on numbers, because this is the only objective measurement vehicle.

The United States Supreme Court's decision in Adarand Constructors, Inc. v. Peña, 63 U.S.L.W. 4523 (U.S. June 12, 1995) casts serious doubt on the constitutionality of the FCC's EEO program as currently fashioned and enforced. In Adarand, the Supreme Court held that strict scrutiny is the appropriate standard of review for federal affirmative action programs which use

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<sup>9</sup> See NPRM, at ¶ 15.

racial or ethnic classifications as the basis for decision-making. Applying the strict scrutiny required by Adarand, governmental classification systems based on race not only must advance a "compelling" governmental interest but must also be "narrowly tailored" to achieve that purpose.

The FCC's EEO policies are undeniably an affirmative action program within the meaning of Adarand. The FCC's policies go far beyond mere encouragement of minority hiring and prohibition of discrimination. The FCC bases license renewal decisions on EEO data. Licensee's are required to keep detailed records as a substantive component of its EEO obligations. Licensees are effectively required to comply with numeric "guidelines" for minority hires. Because these requirements, taken together, constitute an affirmative action program, upon which the government bases significant decisions, the FCC's EEO policies must be evaluated under the strict scrutiny standard set forth in Adarand.

In a Memorandum to General Counsels of federal regulatory agencies, the Department of Justice has identified the factors that typically make up the "narrowly tailored" test:

- (1) whether the government considered race-neutral alternatives before resorting to race-conscious action;
- (2) the scope of the affirmative action program, and whether there is a waiver mechanism that facilitates the narrowing of the program's scope;
- (3) the manner in which race is used, i.e., whether race is a factor in determining eligibility for a program, or whether race is just one factor in the decision-making process;
- (4) the comparison of any numerical target to the number of qualified minorities in the relevant sector or industry;
- (5) the duration of the program and whether it is subject to periodic review;
- (6) the degree and type of burden caused by the program.

DOJ Memo, at 19 (June 28, 1995).

The initial justification for the FCC's EEO program was to prevent licensee's from discriminating against minority applicants. See Non-Discrimination in Employment Practices, 13 FCC 2d 766, 769-770 (1968). While this is a "compelling" governmental purpose, examination of the factors enumerated in the DOJ Memo show that the FCC's EEO program is not "narrowly tailored" to achieve that purpose. Because racial classifications are the raison d'être of the FCC's current EEO program they are constitutionally suspect under Adarand. The FCC's EEO rules in essence require broadcast stations to maintain a specific level of minority employment. Stations which fall outside the FCC's statistical processing guidelines are required to provide extensive information and may ultimately be fined, even without any allegation of intentional discrimination.

To the extent that the purpose of the FCC's EEO program is "to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups" (Non-Discrimination in Employment Practices, 60 FCC 2d 226, 229 (1976), this, standing alone, is an impermissible governmental purpose. The Supreme Court has held that, where affirmative action is used to foster racial and ethnic diversity, the government must seek some further objective beyond the mere achievement of diversity itself. Regents of the University of California v. Bakke, 438 U.S. 265 (1978). See also DOJ Memo at 16. Moreover, the mere under representation of minorities in a particular industry when compared to general population statistics is an insufficient predicate for affirmative action. City of Richmond v. J.A. Croson Co., 488 U.S. 469, 501 (1989).

There has been no justification for the evolution of the FCC's EEO rule. In fact, it has been somewhat of a political football. Under Adarand, the Commission is plainly required to substantiate the presumed relationship between employment practices and programming and to determine

whether the EEO requirements are narrowly tailored to achieve a compelling goal. Because there is no factual foundation for any of these conclusions, the FCC must undertake a searching examination of its current policies.

It should be made clear in no uncertain terms that the Associations are committed to equal rights and equal employment opportunities for women and minorities. Nonetheless, quotas are unconstitutional, as are any standards which create *de facto* quotas.

## VI. CONCLUSION

For the reasons expressed herein, NCAB and VAB believe that the Commission's EEO rule is ripe for substantial revision. The current record keeping obligations imposed by the rule are inordinately burdensome on smaller broadcasters. The experience of such broadcasters is that any benefits from the record keeping requirements are greatly outweighed by its detriments. Accordingly, smaller broadcasters should be afforded relief from these requirements. Additionally, the Associations believe that internship and training programs are a solid way to promote minority interest and involvement in the broadcast industry. The Associations propose that the FCC make it possible for all participating broadcasters to opt out of the FCC record keeping requirements by their participation in projects which offer tangible, real world benefits to minorities and women.

Respectfully submitted,

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